

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

ADMIRALTY SUIT NO. 2 OF 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MRS. KANIZ AHMED AND ANR. ... PLAINTIFFS

VERSUS

THE VESSEL "M.V.RAM EX-M.V.
GREEN HAD" AND ORS. ... DEFENDANTS

Appearance:

Mr. B.H. Bhagat, learned Counsel for the plaintiffs.
Mr. D.S. Nanavati, learned Counsel for the defendant no.4
Defendants nos. 1 to 3 served.

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 22/02/96

ORAL JUDGEMENT

This brief orders shall govern the decision and disposal of this Admiralty Suit.

The plaintiff-Mrs.Kaniz Ahmed and Okeanos Naftiliaki Company Limited, an existing Company under the laws of the Republic of Liberia, having their registered office at Liberia, has instituted this Admiralty Suit, against the three defendants. Defendant no.1 happens to be the Vessel/ship while the defendant no.2 have been described as the owners and the parties interested in the vessel/ship. The defendant no.3 happens to be an existing Company, as per the laws of the Republic of Panama. Defendant no.4 has been joined, later on, as per the orders passed by me, in Civil Application/Notice of Motion No. 3 of 1996. Any how, it should be made clear that, no decree is asked for, against the said defendant no.4.

The case of the plaintiffs in brief is that, the plaintiff no.1 carries on, and at all the material times, had carried on the business as Ship Chandlers, Crew Recruitment Agents and suppliers of all kinds of necessaries to vessels calling in the various Ports of India. According to them, under an arrangement, at the instance of the plaintiff no.2, the plaintiff no.1 would supply the necessities of the ship. As the case of the plaintiffs goes further, under this arrangement had, at the instance and the directions of the plaintiff no.2, the plaintiff no.1 had supplied certain necessities to the ship/vessel. At the relevant time, the ship/vessel was registered in the name of "M.V.Green Had", but later on, the name was changed to "M.V.Ram Ram". It is the case of the plaintiffs that, an amount of US \$ 6,637.05 equivalent to Rs.2,12,385.60ps would be due and payable by the defendant no.3 to the plaintiff no.1. In the same way, according to her, an amount of US \$ 16,704 equivalent to Rs.5,34,528/- is due and payable by the defendant no.3 in favour of the plaintiff no.2. The plaintiffs, therefore, have prayed for the above said amount together with interest at the rate of 22% per annum.

Upon a valid service of the summons, the defendants nos.1, 2 and 3 have not appeared. At a later juncture, Civil Application/Notice of Motion No.3 of 1996 in the Admiralty Suit was taken out, by the defendant no.4. The prayer was that, the said defendant should be impleaded in the proceedings as the defendant no.4. This was found to be, absolutely, necessary because, according to the defendant no.4, the vessel/ship came to be sold by her owners to the defendant no.4, free of all encumbrances. It is, therefore, clear that, no decree is claimed against the defendant no.4.

Later on, the application was submitted on behalf of the plaintiffs, for seeking an ex parte decree against the defendants nos.1, 2 and 3, who were duly served, but have failed to appear before this Court, in response to the summons issued upon them. But, regard being had to the provisions contained in Order 9-Rule 6, it was ordered and directed that, as the defendants who have been duly served, but have failed to appear before the Court, the Suit against them should be heard, ex parte. These orders were passed on 1st February 1996 and the suit was made S.O. to 6th February 1996.

When the Suit comes up before me, today, on 22nd February 1996, there is no appearance on behalf of any of the defendants nos.1, 2 and 3. Necessarily, therefore, there is no prayer for opposing the orders of ex parte proceedings against them. In view of this, this Court has no other alternative, but to pronounce ex parte decree against the defendants nos.1, 2 and 3, or any one of them, who is found liable.

Upon the perusal of the material produced by the plaintiffs and upon hearing learned Counsel Mr. B.H. Bhagat, it appears that, the plaintiffs have been able to establish their case against the defendant no.3. The material makes it, abundantly, clear that, the necessaries, as averred by the plaintiffs in the plaint, were provided and that the amount as claimed for in the Suit, by the plaintiffs have remained unpaid and due. The decree, therefore, shall have to be passed.

As noticed earlier, the defendant no.1-the ship/vessel has changed the hands and the ownership, moreover, the necessaries were supplied to the defendant no.3. The defendant no.2 has been described as the owners of the defendant no.3. In that case, the decree for the amount claimed in the plaint requires to be passed against the defendant no.3. Accordingly, the suit is decreed against the said defendant for the amount claimed in the plaint, by the plaintiffs, along with interest at the rate of 16% per annum, from the date of the suit till the realisation.

Reverting to my orders dated January 16, 1996 in Civil Application/Notice of Motion No.3 of 1996, it shall have to be appreciated that, based upon a consensus between the learned Counsels, it has been said that, the defendant no.4-the purchaser of the ship/vessel shall furnish a Bank Guarantee of a Nationalised Bank covering the claim made by the plaintiffs in the suit, along with interest, within a period of seven days, from the date of the order. It was also said in the said orders that, the Bank Guarantee shall be kept alive and shall not be revoked till the decision of the suit and the

execution of the decree, if any, in the suit. This orders dated January 16, 1996 were required to be modified, rather slightly, by the orders dated February 1, 1996, in which, it has been stated that, the delay in presenting the Bank Guarantee for a day only is condoned. It is also further said that, as per the undertaking, the Bank Guarantee, which is only upto January 20, 1997, shall stand extended or a fresh Guarantee could be given, till the above said eventuality, as indicated in the orders dated January 16, 1996 occurs. It is, therefore, hereby ordered and clarified that, the said Bank Guarantee given by and on behalf of the defendant no.4 shall be kept alive, till the execution of the decree.

The Suit stands disposed of, in the above said manner, with costs, as indicated above. The Decree be drawn accordingly.
